

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 18

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte WERNER RHODE

Appeal No. 1997-1422
Application 08/279,557

ON BRIEF

Before KIMLIN, OWENS and KRATZ, *Administrative Patent Judges*.

OWENS, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal from the examiner's refusal to allow claims 1-20 as amended after final rejection. These are all of the claims in the application.

THE INVENTION

Appellant claims a weft inserted warp knit fabric for use

as the female fabric in a hook and loop fastener. The fabric has wales of stitches on its back side having free loops arranged such that adjacent loops tilt sideways alternately in opposite directions. Claim 1 is illustrative and reads as follows:

1. A weft inserted warp knit fabric for use as the female fabric in a hook and loop fastener comprising: a weft inserted warp knit fabric having a face side and a back side, said back side of said fabric having a plurality of spaced wales of stitches with a lap portion of each of said stitches projecting outwardly therefrom to form a free loop connected only at its base to its respective wale with adjacent loops in each wale tilted sidewise alternately in opposite directions and a weft yarn inserted into the courses of the fabric between the face and back side of the fabric and extending across the full width of the fabric.

THE REFERENCES

Rogers	4,624,116	Nov. 25,
1986		
Matsuda	4,709,562	Dec. 1,
1987		

THE REJECTION

Claims 1-20 stand rejected under 35 U.S.C. § 103 as being unpatentable over Rogers in view of Matsuda.

OPINION

We have carefully considered all of the arguments advanced by appellant and the examiner and agree with

appellant that the aforementioned rejection is not well founded. Accordingly, we reverse this rejection.

Rogers discloses a weft inserted warp knit fabric for use as the female fabric in a hook and loop fastener (col. 1, lines 9-13). Rogers' fabric has spaced wales of stitches with a lap loop (12) of each of the stitches projecting outwardly therefrom to form a free loop connected only at its base to its respective wale (col. 1, lines 46-53). Unlike appellant's loops which are tilted sideways alternately in opposite directions, Rogers' loops all point in the same direction (figure 2).

Matsuda discloses a warp knit support tape for hook and loop fasteners, having pile loops (17) which tilt sideways alternately on opposite sides of wales (18) (col. lines 34-39; col. 2, lines 15-19; figure 4). Matsuda teaches that this arrangement of pile loops provides increased opportunity to engage the hooks on the mating tape (col. 2, lines 19-23).

Appellant argues that "[t]here is no teaching in Matsuda that would make it obvious that the lap side loops of Rogers can be alternated in the manner claimed" (brief, page 4).

The examiner argues that it would have been obvious to

one of ordinary skill in the art to make Rogers' lap loops tilt sideways alternately in opposite directions to provide increased opportunity to engage the hooks on the mating fabric as taught by Matsuda (answer, pages 6 and 8).

Even if Matsuda would have motivated one of ordinary skill in the art to arrange Rogers' loops such that they tilt sideways alternately in opposite directions, the examiner's argument is not persuasive because the examiner has not provided evidence that the level of ordinary skill in the art was such that the ordinarily skilled artisan would have had a reasonable expectation of success in making this modification. See *In re Vaeck*, 947 F.2d 488, 493, 20 USPQ2d 1438, 1442 (Fed. Cir. 1991); *In re O'Farrell*, 853 F.2d 894, 902, 7 USPQ2d 1673, 1680 (Fed. Cir. 1988); *In re Longi*, 759 F.2d 887, 892-93, 225 USPQ 645, 648 (Fed. Cir. 1985). The Rogers and Matsuda free loop structures differ in that in the Rogers fabric, the inner loop of two loops of a wale is used to form the free loops (figure 1), whereas in the Matsuda fabric, the outer loop of three loops of a wale is used to form the free loops, and the free loops pass through the wale in a different manner than in

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the Rogers fabric (figure 3). The examiner has not explained why one of ordinary skill in the art, given these references but not appellant's disclosure, would have had a reasonable expectation of success in modifying the structure of the Rogers fabric in the manner proposed by the examiner.

The examiner, therefore, has not carried the burden of establishing a *prima facie* case of obviousness of appellant's claimed invention.

DECISION

The rejection of claims 1-20 under 35 U.S.C. § 103 as being unpatentable over Rogers in view of Matsuda is reversed.

REVERSED

	EDWARD C. KIMLIN)	
	Administrative Patent Judge)	
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	TERRY J. OWENS)	BOARD OF
PATENT	Administrative Patent Judge)	APPEALS AND

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PETER F. KRATZ)	
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